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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/926,367	06/13/2002	Christian Marzolin	215140US0PCT	9256
22850	7590	09/16/2004	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			CHEVALIER, ALICIA ANN	
			ART UNIT	PAPER NUMBER

1772

DATE MAILED: 09/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 09/926,367	Applicant(s) MARZOLIN ET AL.	
	Examiner Alicia Chevalier	Art Unit 1772	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 August 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see continuation sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 1-18, 28-37 and 61-63.

Claim(s) withdrawn from consideration: 19-27, 32-60 and 64.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

AL
9.3.04

Continuation Sheet

Continuation of 5. because: It remains the Examiner's position that the claims are unpatentable for reasons previously of record in the final office action, mailed July 23, 2004.

Response to Applicant's Arguments

1. Applicant's arguments in the response filed August 26, 2004 regarding the 35 U.S.C. 103 rejection over Azzopardi (French Patent No. 2,756,276) of record have been carefully considered but are deemed unpersuasive.

Applicant argues that controversy exists as to the interpretation of the claim language of the present invention, specifically applicant argues that the relief can have only two levels in view of the claim language "said relief consist of a low surface level and a high surface level.

As pointed out in the final office action, mailed July 23, 2004, claim 1 recites "a substrate ***comprising*** ... wherein said relief consists of a low surface level and a high surface level." Since the claim uses the term "comprising," which is open language, it is irrelevant that Azzopardi discloses a third surface level.

The substrate must at least have of one relief that consist of a low surface and a high surface level, but the substrate may also include other relieves with other surface levels, since the claim uses the open language comprising.

In other words the even though Azzopardi includes additional surface levels not required by Applicant's invention, it must be noted that Azzopardi discloses the invention as claimed. The fact that it discloses additional structure not claimed is irrelevant.

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Applicant further notes that "When the phrase 'consist of' appears in a clause of the body of a claim, rather than immediately following the preamble, it limits only the element set forth in the clause; *other elements are not excluded from the claim as a whole.*"

As applicant has pointed out other elements are not excluded from the claim as a whole. Therefore, the fact that Azzopardi discloses additional relieves is irrelevant since it discloses a relief with two levels.

Conclusion

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Chevalier whose telephone number is (571) 272-1490. The examiner can normally be reached on Monday through Friday from 8:00 am to 4:00 pm.

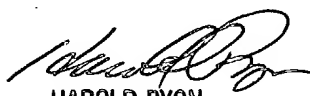
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ac

9/3/04




HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

9/7/04